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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA

8
9 SHEFA LMV, INC.,

10 Plaintiff,

11 vs.

12 ARLINGTON SPECIALTIES, INC.; and
DOES 1 through 100, Inclusive,

13 Defendants.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF

) (Health & Safety Code § 25249.5 et seq.)

) TOXIC TORT/ENVIRONMENTAL

1 Plaintiff, Shefa LMV, INC., hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
4 to Di[2-Ethylhexyl] Phthalate (“DEHP”), a chemical known to the State of California to cause cancer
5 and/or reproductive harm.

6 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
7 Code § 25249.6 (also known as “Proposition 65”) businesses must provide persons with a “clear and
8 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer,
9 birth defects or other reproductive harm.

10 3. Plaintiff alleges that Defendant(s) failed to provide such warning before exposing
11 individuals to DEHP.

12 **II. PARTIES**

13 4. Plaintiff is a non-profit public benefit corporation formed pursuant to the laws of the
14 State of California, composed of California citizens, represented by and through its counsel of record,
15 the Law Office of Daniel N. Greenbaum.

16 5. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65
17 may be brought by “any person in the public interest.”

18 6. Defendant ARLINGTON SPECIALTIES, INC. D/B/A PINCH PROVISIONS is a
19 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
20 authorized the manufacture, distribution, or sale of resealable plastic bags containing personal care
21 items, including, but not limited to, Mani Kit - Totally Nailed It; Beach Kit - Beach, Please; Brunch
22 Kit - Brunch So Hard; Coffee Kit - Love You A Latte; Coffee Kit - Pumpkin Spice Everything; Girls
23 Night Kit - Champagne Campaign; Eyewear Kit - Always Sunny; Fest Aid Kit - Wristband Warrior;
24 Hair Kit - Hair Goals; Hangover Kit - I Regret Nothing; Hangover Kit - Rosé All Day; Hangover Kit
25 - Sip Sip Hooray; Pool Party Kit - I'm On A Float; Shoe Kit - Blister Sister; and Snow Bunny Kit -
26 Sleigh All Day that contain DEHP (the “PRODUCTS”) for sale within the State of California,
27 without first giving clear and reasonable warning.

1 14. An exposure to a chemical in a consumer product is one “which results from a
2 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
3 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

4 15. Proposition 65 establishes a procedure by which the State develops a list of chemicals
5 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

6 16. No warning must be provided concerning a listed chemical until twelve (12) months
7 after the chemical first appears on the list. (Health & Safety Code § 25249.10(b).)

8 17. Any person “violating or threatening to violate” the statute may be enjoined in any
9 court of competent jurisdiction. (Health & Safety Code, § 25249.7.)

10 18. Proposition 65 defines to “threaten to violate” as “to create a condition in which there
11 is a substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

12 19. In addition, violators are liable for civil penalties of up to \$2,500.00 per day for each
13 violation, recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)

14 20. Actions to enforce the law “may be brought by the Attorney General in the name of
15 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City
16 having a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

17 21. Private parties are given authority to enforce Proposition 65 “in the public interest,”
18 but only if the private party first provides written notice of a violation to the alleged violator, the
19 Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.

20 22. If no public prosecutors commence enforcement within sixty (60) days, then the
21 private party may sue. (Health & Safety Code § 25249.7(d).)

22 **V. FACTS**

23 23. The Office of Environmental Health Hazard Assessment (“OEHHA”) is the California
24 agency tasked (in part) with providing the regulatory and scientific framework for Proposition 65.

25 24. OEHHA placed DEHP on the list of chemicals known to California to cause cancer on
26 January 1, 1988. (27 CCR 27001(b))

1 25. OEHHA placed DEHP on the list of chemicals known to California to cause
2 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

3 26. Defendant Arlington Specialties, Inc. d/b/a Pinch Provisions is the manufacturer(s)
4 and distributor(s) of the PRODUCTS for use by individuals in the home and other endeavors.

5 27. The PRODUCTS are sold through various retailers, including but not limited to Urban
6 Outfitters, located in California for use by citizens of the State of California.

7 28. On April 24, 2017, Plaintiff purchased the PRODUCT from an Urban Outfitters retail
8 location in California.

9 29. On May 17, 2017, Plaintiff's expert prepared a report summarizing the results of
10 analysis on the PRODUCTS, including the amount of the DEHP in the product.

11 30. Based on the levels, Plaintiff's expert opined that use of the PRODUCTS would lead
12 to exposure to DEHP above the safe harbor levels set by OEHHA.

13 31. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
14 Violation.

15 32. Pursuant to the statute and regulations referenced above, on May 26, 2017 Plaintiff
16 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
17 required public agencies.

18 33. Plaintiff is unaware of any governmental prosecution against Defendant.

19 34. At least sixty (60) days have elapsed since service of the Notice of Violation.

20 35. Based upon consultation with experts, Plaintiff alleges that individuals who purchase,
21 handle, or use the PRODUCTS are exposed to DEHP chiefly through:

22 a. contact between the item and the skin;

23 b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP
24 directly from the hand to mouth, and indirectly by transfer of DEHP from the skin to objects
25 placed in the mouth, such as food; and

26 c. through absorption of DEHP through the skin.
27

1 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individuals, within the meaning of Health & Safety Code § 25249.6.

3 46. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
4 \$2,500 per day for each violation, as well as other remedies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray that the Court:

- 7 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
8 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
9 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
10 exposing persons within the State of California to Listed Chemicals caused by the use of their
11 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
12 application to the court;
13 3. Award Plaintiffs their costs of suit;
14 4. Grant such other and further relief as the court deems just and proper.

15 Respectfully submitted,

16
17 DATED: January 25, 2018

18 LAW OFFICE OF DANIEL N. GREENBAUM

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21 By: DANIEL N. GREENBAUM
22 Attorneys for Plaintiff
23 Shefa LMV, INC.